

REMARKS / ARGUMENTS

I. General Remarks and Disposition of the Claims

Please consider the application in view of the following remarks. Applicants thank the Examiner for her careful consideration of this application.

At the time of the Office Action, claims 42-61 were pending in this application. Claims 42-61 were rejected in the Office Action.

Claims 42-61 stand rejected under 35 U.S.C. § 103(a). Claims 42-54 stand provisionally rejected on the grounds of obviousness-type double patenting.

II. Remarks Regarding Rejections Under 35 U.S.C. § 103(a)

A. Rejections of Claims 42-48 Over *Nguyen*, *Wang*, and *Lee*

Claims 42-48 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,209,643 issued to Nguyen *et al.* (hereinafter "*Nguyen*") in view of U.S. Patent No. 6,458,867 issued to Wang *et al.* (hereinafter "*Wang*") in further view of U.S. Patent No. 6,817,414 issued to Lee *et al.* (hereinafter "*Lee*"), for the reasons set forth in the prior non-final office action dated November 14, 2008. With respect to this rejection, the Final Office Action further states:

(i) Applicants submit that although the Examiner alleges that Nguyen does not limit their teaching to particular tackifying compounds, Applicants kindly refer the Examiner to col. 5, lines 10-19 and col. 6, lines 9-14 of Nguyen which discuss suitable tackifying compounds.

The argument is unconvincing because at col. 5, lines 10-19, Nguyen teaches: "Compounds suitable for use as a tackifying compound comprise substantially *any* compound which when in liquid form or in a solvent solution will form a non-hardening coating, by themselves"; and at col. 6, lines 9-14 Nguyen teaches: "*Additional* compounds which may be utilized as tackifying compounds include liquids and solutions of, for example, polyesters, polyethers and polycarbamates, polycarbonates, styrene-butadiene lattices, *natural or synthetic resins* such as shellac and the like". *Note that the tackifying compound should be degradable since Nguyen teaches that coated treatment chemical is subsequently released within the subterranean formation.* Thus, in contrast to Applicants statement, col. 5, lines 10-19 and col. 6, lines 9-14 of Nguyen show that any (degradable) natural or synthetic resins may be used as a tackifying compound.

(ii) Applicants submit that the motivation articulated in the Office Action for combining Nguyen, Wang, and Lee is insufficient to

support a prima facie case of obviousness. In the Office Action the Examiner alleges: It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used lactic polymer (claimed polylactide) as a tackifying compound in Nguyen et al with the expectation of providing the desired degradation a filter cake since Lee et al teach that chemical that slowly hydrolyze and release an acidic byproduct e.g. lactic polymer are suitable to be used to degrade a filter cake, and Nguyen et al do not limit their teaching to particular tackifying compounds. (Office Action at 5.) However, there is no teaching in Nguyen of the desirability of degrading a filter cake with the tackifying compounds disclosed therein. See Nguyen, entire disclosure. Rather, Nguyen teaches the use of the tackifying compounds to delay the release of a treatment chemical and to aid in the creation of proppant agglomerates. See Nguyen, col. 3, lines 49-57 and col. 12, lines 49-55. Thus, the expectation of providing a desired degradation of a filter cake using chemicals that slowly hydrolyze and release an acidic by-product, would not motivate a person of ordinary skill in the art to include a polylactide as the tackifying compound in the methods of Nguyen. Therefore, Applicants respectfully submit that the motivation to combine these references is insufficient, and as such this combination cannot obviate Applicants' claims. Therefore, Applicants respectfully assert that claims 42-54 are not obviated by the combination of Nguyen, Wang, and Lee.

The Examiner respectfully disagrees with this argument.

As to applicants' remarks that there is no teaching in Nguyen of the desirability of degrading a filter cake with the tackifying compounds disclosed therein. See Nguyen, entire disclosure, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

According to MPEP, to establish a prima facie case of obviousness, *three basic* criteria must be met. First, there must be some suggestion or motivation in the references themselves to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's

disclosure. In re Vaeck, 947 F.2d 488,20 USPQ2d 1438 (Fed. Cir. 1991).

Nguyen teaches that *any degradable tackifying compound may be used* for coating chemical such as biocide or corrosion inhibitor *including polyester and polyamide* which degrade releasing acid. Thus, Nguyen teaches implicitly acid releasing tackifying compounds. Lee teaches that compounds that slowly hydrolyze and release an acidic by-product e.g. lactic polymer are suitable to be used to degrade a filter cake. First, there is a *clear motivation* to combine Nguyen with Lee to provide both slow release of the biocide or corrosion inhibitor and degrading a filter cake due to acid release. Second, one of ordinary skill in the art would have reasonable expectation of success of using polylactide of Lee because Nguyen teaches other acid releasing tackifying compounds but does not limit the tackifying compounds to them. Finally, the references when combined teach or suggest all the claim limitations.

Therefore, the combination of Nguyen, Wang, and Lee meets all three basic criteria, and, thus, a prima facie case of obviousness has been established by the Examiner.

(Final Office Action at 6-8 (emphasis added).) Applicants respectfully disagree with these rejections.

In order for a reference or combination of references to form the basis for a rejection under § 103(a), a *prima facie* case of obviousness must be established. MANUAL OF PATENT EXAMINING PROCEDURE ("MPEP") § 2142 (2008). Obviousness is determined by construing the scope of the prior art, identifying the differences between the claims and the prior art, determining the level of skill in the pertinent art at the time of the invention, and considering objective evidence present in the application indicating obviousness or nonobviousness. *Id.* at § 2141; *Graham v. John Deere*, 383 U.S. 1, 17 (1966). Moreover, there must be some articulated reasoning with some rational underpinning to support the alleged obviousness of the proposed modifications or combinations of prior art. MPEP at § 2143.01; *KSR International Co. v. Teleflex, Inc.*, 550 U.S. 398, 127 S.Ct. 1727, 1731 (2007); *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). Applicants respectfully submit that the combination of *Nguyen, Wang, and Lee* fails to teach or suggest several elements of independent claim 42, and, for several reasons, there is no teaching, suggestion, or rational explanation for combining various elements from these references to arrive at Applicants' claimed methods.

1. ***Nguyen* does not teach or suggest the use of “any” acid-releasing degradable material.**

The Final Office Action asserts that the tackifying compound in *Nguyen* “should be” an “acid-releasing degradable material,” as recited in claim 42, since “*Nguyen* teaches that coated treatment chemical is subsequently released within the subterranean formation,” and thus concludes that “*any* degradable tackifying compound may be used.” (shown in the emphasized passages above). Respectfully, *Nguyen* does not support these assertions. *Nguyen* contains no requirement or suggestion whatsoever that the tackifying compound is “degradable.” Rather, *Nguyen* states that “[t]he tackifying compound changes the interfacial surface tension effects of fluids in contact with the treatment chemicals to reduce wetting of the treatment chemicals by the formation fluids thereby reducing the dissolution rate of the chemicals.” (*Nguyen* at col. 4, ll. 51-56.) This does not state or imply that the tackifying compound “should be degradable,” as the Final Office Action suggests, and in fact has nothing to do with the degradability of the tackifying compound.

The Final Office Action also cites a passage of *Nguyen* that uses the word “any” in describing the tackifying compounds that may be used, asserting that *Nguyen*’s teaching of “any” tackifying compound “teaches implicitly” acid-releasing tackifying compounds. (Final Office Action at 7.) However, in relying on a theory of “implicit” or “inherent” disclosure, the fact that *Nguyen*’s tackifying compounds “may” include degradable or acid-releasing materials “is not sufficient to establish the inherency of that characteristic.” See MPEP at § 2112. The Manual of Patent Examining Procedure instead requires “a basis in fact and/or technical reasoning ... that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.” *Id.* (emphasis in original). The relevant passage of *Nguyen* reads as follows:

Compounds suitable for use as a tackifying compound comprise substantially any compound which when in liquid form or in a solvent solution will form a non-hardening coating, by themselves....

(*Nguyen* at col. 5, ll. 10-13.) Neither this passage nor anything else in *Nguyen* suggests that its tackifying compounds are *necessarily* degradable.

2. **There is no teaching, rational explanation, or reasonable expectation of success to combine or substitute the tackifying compounds of *Nguyen* and the polyglycolic acids of *Lee*.**

In attempting to modify *Nguyen* to include one of the specific acid-releasing degradable materials recited in claim 42, the Final Office Action maintains that “there is a clear motivation to combine *Nguyen* with *Lee* to provide both slow release of the biocide or corrosion inhibitor and degrading a filter cake due to acid release.” (Final Office Action at 7.) This assertion merely states the result of the proposed combination - that both slow release of a treatment chemical and acid release would be provided. It does not provide a motivation or rationale known to a person of skill in the art for making that combination. MPEP at § 2143.01 (“The mere fact that references can be combined or modified does not render the resultant combination obvious,” and “[r]ejections on obviousness cannot be sustained by mere conclusory statements”).

The Final Office Action further asserts that “one of ordinary skill in the art would have reasonable expectation of success of using polylactide of *Lee* because *Nguyen* teaches other acid releasing tackifying compounds but does not limit the tackifying compounds to them.” (Final Office Action at 7-8.) In other words, the Final Office Action assumes that, because *Nguyen* lists certain materials that may, in other contexts, degrade to release an acid, then *any* acid-releasing degradable material (e.g., the polylactides disclosed in *Lee*) could be used as a tackifying compound in *Nguyen*. Respectfully, *Nguyen* does not support this assumption. As clearly stated in the above-quoted passage from *Nguyen*, *Nguyen* explicitly limits the tackifying compound to compounds that “when in liquid form or in a solvent solution will form a non-hardening coating, by themselves....” (*Id.* at col. 5, ll. 10-13.) *Nguyen* further states that the tackifying compound “causes the treatment chemical containing or coated particulates to adhere to and remain dispersed within the coated particulate.” (*Id.* at col. 4, ll. 57-59.) Thus, in *Nguyen*, the tackifying compounds (e.g., polyamides, polyesters, etc.) do not degrade or generate any substance that treats a portion of a subterranean formation, but rather they control the release of a *separate treatment chemical* (e.g., biocide, corrosion inhibitor, etc.) with which the tackifying compound has been mixed. *Lee* does not discuss any “tackifying compound” whatsoever, much less does it teach or suggest any compound that could perform this function. The polyglycolic acid in *Lee* does not control the release of another treatment chemical, but rather is *the treatment chemical* that generates acid to break down components of a filter cake. (*Lee* at col. 2, ll. 60-62.) Logically, there is no reason that a person of skill in the art would use the treatment chemicals of *Lee* in place of or in combination with a tackifying compound in

Nguyen since they are being used in completely different ways. To make this combination or substitution simply because Applicants' specification discusses the use of both polyesters and glycolides as possible "acid-releasing degradable materials" is an impermissible use of hindsight that cannot form a basis for a proper § 103 rejection. MPEP at § 2142. Moreover, if they performed any function at all, the degrading polylactides of *Lee* would not be able to fulfill the aforementioned functions of a tackifying compound discussed in *Nguyen*, rendering those compositions unsatisfactory for their stated purpose. Such a modification of *Nguyen* cannot render Applicants' invention obvious. *Id.* at § 2143.01 (V).

3. *Nguyen* does not include "allowing the acid-releasing degradable material to produce acid," as recited in claim 42, and there is no teaching or rational explanation for modifying *Nguyen* to do so.

The Final Office Action cites *Wang* for the notion that "it is a common knowledge in the art" that the polyesters and polyamides described in *Nguyen* "hydrolyze either through acid or base catalysis, to a carboxylic acid." (Final Office Action at 4; *see also* Non-Final Office Action dated November 14, 2008.) Applicants respectfully remind the Examiner that, in order to teach or suggest a method step of "allowing the ARDM to produce an acid," it is not enough to teach a compound that is merely capable of performing this step, but the step itself must be taught and combined with the other prior art. However, *Nguyen* does not conduct the "acid-base catalysis" reactions described in *Wang*, either explicitly or inherently. Even if, as the Final Office Action suggests, "it is a common knowledge in the art" that polyesters, polyamides, or any of the materials described in *Nguyen* or *Lee* are capable of undergoing such hydrolysis, there is no reason that a person of skill in the art would modify *Nguyen* to do so, as required by Applicants' claims. MPEP at § 2143.01 (fact that all elements are "known" and "can be combined" is not sufficient; must be some rationale for combining them). Indeed, in certain embodiments, the tackifying composition disclosed in *Nguyen* is used to "change[]" the interfacial surface tension effects of fluids in contact with the treatment chemicals to reduce wetting of the treatment chemicals by the formation fluids thereby reducing the dissolution rate of the chemicals." (*Nguyen* at col. 4, ll. 52-55.) If the tackifying composition degrades to produce an acid, it would not perform this function, rendering the tackifying compositions unsatisfactory for their stated purpose. Such a modification of *Nguyen* cannot render Applicants' invention obvious. *See* MPEP at § 2143.01 (V).

4. **The methods and materials of *Lee* are incompatible with and teach away from coating a coating solution onto a particulate “on-the-fly,” as recited in claim 42.**

Finally, even if *Nguyen* teaches methods that include coating a particulate *on-the-fly*, the acid-releasing degradable materials as disclosed in *Lee* cannot be used in conjunction with those methods. Applicants’ specification defines that the “on-the-fly” step in the present invention means that the particulates and coating solution “are combined and mixed while continuing to flow as a single stream as a part of the on-going treatment at the job site.” (Specification at ¶ 0025.) However, *Lee* teaches that the polyglycolic acid must be heated to at least 210°F and maintained at that temperature to remain in liquid form. Gravel particles are then “slowly added and constantly stirred” into the liquid polyglycolic acid, cooled to room temperature, and ground “using a mortar and pestle or other grinding device, and sieved through a screen ... to remove fine particles.” (*Lee* at col. 3, l. 64 - col. 4, l. 11.) A person of ordinary skill in the art would not expect that these teachings of heating, cooling, and sizing the materials prior to use - which *Lee* does not describe as optional, and must be considered in determining whether *Lee* obviates Applicants’ claims - could be combined with a method that involves coating a particulate “on-the-fly.” See MPEP at § 2141.02 (“A prior art reference must be considered in its entirety, *i.e.*, as a whole, including portions that would lead away from the claimed invention.”). Such a complicated method teaches away from and discourages a person of skill in the art from using the degradable materials described in *Lee* in an on-the-fly coating step. *Id.* at § 2145 (X.D.) In view of the markedly-different and complicated coating process taught in *Lee*, coating the degradable materials of *Lee* onto a particulate “on-the-fly,” as Applicants’ claims require, would not be obvious.

For all of the reasons discussed above, Applicants submit that independent claim 42 and all of its dependent claims are not obviated by the combination of *Nguyen*, *Wang*, and *Lee*. Accordingly, Applicants respectfully request withdrawal of this rejection with respect to claims 42-48.

B. Rejections of Claims 42-48 Over *Nguyen*, *Wang*, *Lee*, and *McDougall*

Claims 42-48 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Nguyen* in view of *Wang* in view of U.S. Patent No. 5,192,615 issued to McDougall *et al.* (hereinafter “*McDougall*”) or *Nguyen* in view of *Wang* in further view of *Lee* in further view of *McDougall*, for the reasons set forth in the prior non-final office action dated November 14,

2008, and the additional reasons discussed above in Section A. (Final Office Action at 3.) Applicants respectfully disagree.

As discussed in Section A., *supra*, the combination of *Nguyen*, *Wang*, and *Lee* cannot obviate independent claim 42. Nor does *McDougall* supply any of the missing elements or provide sufficient motivation or rationale to combine the prior art to arrive at Applicants' claimed invention. Thus, for at least the same reasons discussed in Section A., Applicants respectfully request the withdrawal of these rejections with respect to claims 42-48.

C. Rejections of Claims 55-61 Over *Nguyen*, *Wang*, *Lee*, and *McDougall*

Claims 55-61 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Nguyen* in view of *Wang* in view of *McDougall* or *Nguyen* in view of *Wang* in further view of *Lee* in further view of *McDougall*. With respect to these rejections, the Final Office Action states:

The cited prior art fails to teach that the fluid suspension further comprises a plasticizer other than starch (Claim 55).

McDougall et al teaches that generally a fracturing fluid comprises a viscous or gelled polymeric solution, a propping agent, a chemical breaker and other additives commonly used in fracturing fluids (See column 2, line 65 to column 3, line 1), e.g. fluid loss or wall building agents such as bentonite, silica flour, guar gum and surfactants; friction-reducing agents such as small amounts of high molecular weight linear polymers such as polyacrylamide; surfactants or alcohol to reduce interfacial tension and the resistance to return flow (See column 8, lines 7-16).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have added bentonite, silica flour, or guar gum to the fluid suspension of *Nguyen et al* with the expectation of providing the desired control of fluid loss since *McDougall et al* teaches that starch bentonite, silica flour, or guar gum is an additive commonly used in fracturing fluids as a fluid loss or wall building agent.

(Final Office Action at 3-4.) Applicants respectfully disagree with these rejections.

As discussed in Section B. above, the combination of *Nguyen*, *Wang*, *Lee*, and *McDougall* cannot obviate independent claim 42. Since independent claim 55 recites the elements discussed in Sections A.1., A.3., and A.4. that are not obvious over *Nguyen*, *Wang*, *Lee*, and *McDougall*, that combination of prior art cannot obviate claim 55 for at least those same reasons. Nor does *McDougall* supply any missing elements or provide sufficient motivation or

rationale to combine the prior art to arrive at Applicants' claimed invention. Thus, for at least those same reasons, Applicants respectfully request the withdrawal of these rejections with respect to claims 55-61.

The combination of *Nguyen, Wang, Lee, and McDougall* also cannot obviate independent claim 55 because that combination does not teach a plasticizer that does not comprise starch, as recited in claim 55. Indeed, the Final Office Action *explicitly acknowledges* that "[t]he cited prior art fails to teach ... a plasticizer other than starch." The Final Office Action goes on to assert that it would be obvious to add "other additives commonly used in hydraulic fracturing fluids" listed in *McDougall* to the fluid suspension of *Nguyen* "with the expectation of providing the desired control of fluid loss." However, the Final Office Action fails to establish that any of these substances are plasticizers, and *McDougall* certainly does not describe them as such. Even if any of the other additives listed in *McDougall* were plasticizers, it would not be obvious to combine them with the methods and compositions of *Nguyen* and *Lee*. *McDougall* notes that such additives are commonly used in fracturing fluids as "wall-building" (i.e., *filter cake creating*) agents (col. 8, ll. 7-10), whereas *Lee* and Applicants' claims are directed to methods of *degrading a portion of a filter cake*. Persons skilled in the art would not think it obvious to combine additives that are used for such different and conflicting purposes.

For all of the reasons discussed above, Applicants submit that independent claim 55 and all of its dependent claims are not obviated by the combination of *Nguyen, Wang, Lee, and McDougall*. Accordingly, Applicants respectfully request withdrawal of this rejection with respect to claims 55-61.

D. Rejections of Claims 49-54 Over *Nguyen, Wang, Lee, and Tokiwa*

Claims 49-54 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Nguyen* in view of *Wang* in further view of *Lee* and in further view of U.S. Patent No. 6,669,771 to Tokiwa *et al.* ("*Tokiwa*"). With respect to these rejections, the Final Office Action states:

As was discussed previously, *Nguyen et al* discloses that a treatment chemical at least partially coated with a tackifying compound is subsequently released within the subterranean formation (i.e. the tackifying compound is degradable) to treat at the portion of formation in contact therewith (See column 12, lines 33-55). The tackifying compound includes any compound (See column 5, lines 11-12), e.g. a polyamide (See column 5, lines 21-23) or polyesters, polyethers and polycarbamates, polycarbonates,

styrene-butadiene lattices, natural or synthetic resins such as shellac and the like (See column 6, lines 9-14).

The Examiner takes official notice that it is a common knowledge in the art polyester or polyamide hydrolyze either through acid or base catalysis, to a carboxylic acid (i.e. claimed acid releasing degradable material), as evidenced by Wang et al (See column 8, line 66 to column 9, line 12). Although Nguyen et al teaches the tackifying compound includes any compound that adheres to the particles and retards release of the treatment chemical, Nguyen et al fails to teach that the tackifying compound includes other acid releasing compounds.

Lee et al teaches that gravel having coating comprising chemicals that slowly hydrolyze and release an acidic by-product (See column 3, lines 6-15), e.g. lactic polymer (polylactide)* (See column 3, lines 20-28) can be used to degrade a filter cake (See column 2, lines 52-63). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used lactic polymer (claimed polylactide) as a tackifying compound in Nguyen et al with the expectation of providing the desired degradation a filter cake since Lee et al teaches that chemicals that slowly hydrolyze and release an acidic by-product e.g. lactic polymer, are suitable to be used to degrade a filter cake, and Nguyen et al does not limit their teaching to particular tackifying compounds. Moreover, it is held that the selection of a known material based on its suitability for its intended use supported a prima facie obviousness determination in *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945). See MPEP 2144.07.

Nguyen et al in view of Lee et al fails to teach that the tackifying compound is polyhydroxybutyrate or polycaprolactone (Claim 49).

Tokiwa et al teaches that currently known biodegradable resins include chemically synthesized resins, microbially produced resins, and natural product-derived resins (See column 1, lines 31-39) such as an aliphatic polyester, polyhydroxybutyrate, polylactic acid and polycaprolactone (See column 2, lines 25-39). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used polyhydroxybutyrate or polycaprolactone in Nguyen et al in view of Lee et al instead of polyester or polylactic acid with the expectation of providing the desired degradation a filter cake since Lee et al teaches that chemicals that slowly hydrolyze and release an acidic by-product e.g. lactic polymer, are suitable to be used to degrade a filter cake, and Nguyen et al does not limit their teaching to particular tackifying compounds.

(Final Office Action at 4-6 (emphases omitted).) Applicants respectfully disagree with these rejections.

As discussed in Section A., *supra*, the combination of *Nguyen*, *Wang*, and *Lee* cannot obviate independent claim 42. Since independent claim 49 recites all of the elements discussed in Section A. that are not obvious over *Nguyen*, *Wang*, and *Lee*, that combination of prior art cannot obviate claim 49 for at least those same reasons. Nor does *Tokiwa* supply any of the missing elements or provide sufficient motivation or rationale to combine the prior art to arrive at Applicants' claimed invention. Thus, for at least the same reasons discussed in Section A., Applicants respectfully request the withdrawal of these rejections with respect to claims 49-54.

The combination of *Nguyen*, *Wang*, *Lee*, and *Tokiwa* also cannot obviate independent claim 49 because that combination does not teach or suggest allowing any of the degradable materials listed in claim 49 to produce an acid, as recited in claim 49. The Final Office Action cites *Tokiwa* for its disclosure of polyhydroxybutyrate and polycaprolactone as degradable materials. However, *Tokiwa* does not teach or suggest that these materials (or any of the other materials listed therewith) degrade to produce an acid. The Final Office Action cites *Wang* in support of its taking "official notice that it is a common knowledge in the art [that] polyester or polyamide hydrolyze either through acid or base catalysis, to a carboxylic acid," but *Wang* is silent as to whether polyhydroxybutyrates or polycaprolactones are capable of undergoing any reaction to produce an acid. *Wang*'s teachings concerning unrelated compounds cannot be used to supply this missing element.

For all of the reasons discussed above, Applicants submit that independent claim 49 and all of its dependent claims are not obviated by the combination of *Nguyen*, *Wang*, *Lee*, and *Tokiwa*. Accordingly, Applicants respectfully request withdrawal of this rejection with respect to claims 49-54.

III. Provisional Rejections of Claims

Claims 42-54 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7, 9-11, and 13-17 of co-pending U.S. Application Serial No. 11/046,043 in view of U.S. Patent No. 4,829,100. As this rejection is provisional in nature, Applicants will hold in abeyance their response until allowable subject matter is indicated. If the double-patenting rejection remains pending in the present

application and is no longer provisional, Applicants will consider filing a terminal disclaimer at that time.

IV. No Waiver

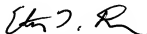
All of Applicants' arguments and amendments are without prejudice or disclaimer. Additionally, Applicants have merely discussed example distinctions from the cited references. Other distinctions may exist, and Applicants reserve the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicants do not acquiesce to the Examiner's additional statements, such as, for example, any statements relating to what would be obvious to a person of ordinary skill in the art.

SUMMARY

In light of the above amendments and remarks, Applicants respectfully request reconsideration and withdrawal of the outstanding rejections. Applicants further submit that the application is now in condition for allowance, and earnestly solicit timely notice of the same. Because this response has been timely filed, Applicants respectfully request that the Examiner issue an advisory action if the Examiner does not find the claims to be allowable in light of the amendments and remarks made herein. Should the Examiner have any questions, comments or suggestions in furtherance of the prosecution of this application, the Examiner is invited to contact the attorney of record by telephone, facsimile, or electronic mail.

Applicants believe that no fees are due in association with the filing of this response. Should the Commissioner deem that any fees are due, including any fees for extensions of time, Applicants respectfully request that the Commissioner accept this as a Petition Therefor, and direct that any additional fees be charged to Baker Botts, L.L.P.'s Deposit Account No. 02-0383, Order Number 063718.1357.

Respectfully submitted,



Elizabeth L. Durham
Registration No. 59,509
BAKER BOTTS L.L.P.
One Shell Plaza
910 Louisiana
Houston, TX 77002
Telephone: 713.229.2104
Facsimile: 713.229.7704
Email: liz.durham@bakerbotts.com

Date: June 24, 2009